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Redhibition and Implied Warranties Under the 1993 Revision of the Louisiana Law of Sales

George L. Bilbe*

I. INTRODUCTION

In the 1993 Regular Session, the Louisiana Legislature passed Act 841, a "comprehensive revision of Civil Code Articles on Sales"¹ formulated by the Louisiana State Law Institute.² The Governor has signed the measure,³ and it will become effective on January 1, 1995. The legislation has a number of noteworthy provisions, and the articles found in the enactment's "Redhibition" chapter⁴ are clearly among the most significant. Many of these new articles, like their counterparts in the Civil Code of 1870, concern the responsibilities of sellers who have sold items having latent vices or defects. In addition to this traditional subject matter, the new redhibition chapter contains provisions recognizing express and implied warranties⁵ including an implied warranty of reasonable fitness for ordinary use⁶ and an implied warranty of fitness for a buyer's particular use or purpose.⁷ Further, a violation of any of these warranties is treated as a breach of a contractual commitment.⁸ Under the provisions expressed in terms of traditional concepts of redhibition, however, a seller who lacked knowledge of redhibitory defects is responsible at most for the reimbursement of the purchase price and the incidental expenses of the sale.⁹ Thus, it will be necessary in analyzing the revision to determine the relationship of the warranty against redhibitory defects and the new warranties providing basis for larger recoveries.

This article examines both the provisions concerning traditional concepts of redhibition and the articles describing warranties not previously recognized in the Louisiana legislation. Effort is made to identify instances where the law has

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1. The legislation is so described in H.B. 106, Reg. Sess., 1993, the source of the enactment.

2. In addition to preparing the revised articles and their accompanying comments, the Law Institute has supplied a lengthy "Introduction" addressing both the pre-existing law and the revision.

3. Approval occurred on June 23, 1993.

4. Chapter 9, entitled "Redhibition," consisting of Revised La. Civ. Code arts. 2520-2548.

5. Revised La. Civ. Code arts. 2529 (express) and 2524 (implied).

6. Revised La. Civ. Code art. 2524. The article is quoted *infra* text following note 80.

7. *Id.*

8. *Id.* See also discussion *infra* text at notes 96-100.

9. See text of La. Civ. Code art. 2531 (1870) quoted *infra* note 18 and discussion *infra* text at note 96.

been changed and to locate provisions needing clarification or other legislative refinement.

II. REDHIBITION

A. Definition

The new legislation, like its antecedents,¹⁰ affords remedies to buyers who have purchased items having latent¹¹ "vices" or "defects." Revised Article 2520 provides:

The seller warrants the buyer against redhibitory defects, or vices, in the thing sold.

A defect is redhibitory when it renders the thing useless, or its use so inconvenient that it must be presumed that a buyer would not have bought the thing had he known of the defect. The existence of such a defect gives a buyer the right to obtain rescission of the sale.

A defect is redhibitory also when, without rendering the thing totally useless, it diminishes its usefulness or its value so that it must be presumed that a buyer would still have bought it but for a lesser price. The existence of such a defect limits the right of a buyer to a reduction of the price.

The second paragraph's definition of a redhibitory defect does not significantly alter the 1870 Code's requirement that the defect render the item "*absolument* useless, or its use so inconvenient *and imperfect*, that it must be supposed that the buyer would not have purchased it, had he known of the vice."¹² The revision's inconsequential changes, as the Law Institute's comments provide certainly do not "change the law."¹³ Similarly, the third paragraph's identification of a category of redhibitory defects providing basis only for a price reduction—as contrasted with those providing basis for rescission—is consistent with the antecedent legislation. The 1870 Code does not define shortcoming

10. The 1870 Code addresses "Redhibition" in articles 2520-2548.

11. The Code of 1870, in Article 2521, provides that "[a]pparent defects, that is, such as the buyer might have discovered by simple inspection, are not among the number of redhibitory vices. The revision's counterpart, Article 2521, reads: "The seller owes no warranty for defects in the thing that were known to the buyer at the time of the sale, or for defects that should have been discovered by a reasonably prudent buyer of such things."

12. La. Civ. Code art. 2520 (1870) (emphasis added). The article provides:

Redhibition is the avoidance of a sale on account of some vice or defect in the thing sold, which renders it either absolutely useless, or its use so inconvenient and imperfect, that it must be supposed that the buyer would not have purchased it, had he known of the vice.

13. Comment (a) to Revised La. Civ. Code art. 2520 so provides.

providing basis only for price reductions. However, its Article 2541 permits a buyer to limit his demand to the reduction of the price “[w]hether the defect in the thing sold be such as to render it useless and altogether unsuited to its purpose, or whether it be such as merely to diminish the value.”¹⁴ Also, the 1870 Code clearly permits the judiciary “in a redhibitory suit” to “decree merely a reduction of the price.”¹⁵

The third paragraph of the new provision seems intended to emphasize that relatively insignificant defects, while justifying monetary adjustments, should not be basis for rescission. However, the differentiation established in the second and third paragraphs as to the severity of defects was not intended to compel rescission in all instances where a buyer would not have purchased if he had been aware of the defects in question. Even in these situations, revised Article 2541¹⁶ affirms the continuing existence of judicial discretion to deny rescission and to reduce the price.

B. Good Faith Seller's Opportunity to "Repair, Remedy, or Correct" Defects

Under revised Article 2531,¹⁷ the “seller who did not know that the thing he sold had a defect is only bound to repair, remedy, or correct the defect.” Further, the buyer can obtain rescission only if the seller “is unable or fails” to repair, remedy, or correct the defects involved. Article 2531¹⁸ of the 1870

14. La. Civ. Code art. 2541 (1870).

15. La. Civ. Code art. 2543 (1870).

16. Revised Article 2541 provides:

A buyer may choose to seek only reduction of the price even when the redhibitory defect is such as to give him the right to obtain rescission of the sale.

In an action for rescission because of a redhibitory defect the court may limit the remedy of the buyer to a reduction of the price.

17. Revised Article 2531 provides:

A seller who did not know that the thing he sold had a defect is only bound to repair, remedy, or correct the defect. If he is unable or fails so to do, he is then bound to return the price to the buyer with interest from the time it was paid, and to reimburse him for the reasonable expenses occasioned by the sale, as well as those incurred for the preservation of the thing, less the credit to which the seller is entitled if the use made of the thing, or the fruits it has yielded, were of some value to the buyer.

A seller who is held liable for a redhibitory defect has an action against the manufacturer of the defective thing, if the defect existed at the time the thing was delivered by the manufacturer to the seller, for any loss the seller sustained because of the redhibition. Any contractual provision that attempts to limit, diminish or prevent such recovery by a seller against the manufacturer shall have no effect.

18. La. Civ. Code art. 2531 (1870) provides:

The seller who knew not the vices of the thing is only bound to repair, remedy or correct the vices as provided in Article 2521, or if he be unable or fails to repair, remedy or correct the vice, then he must restore the purchase price, and reimburse the reasonable expenses occasioned by the sale, as well as those incurred for the preservation of the thing, subject to credit for the value of any fruits or use which the purchaser has drawn from it.

Code, since its amendment in 1974,¹⁹ has likewise assured the good faith seller of an opportunity to remedy defects in the item sold.²⁰ Because there is no significant difference between the revised article and the 1974 amendment,²¹ much of the existing jurisprudence concerning the seller's repair opportunities will have relevance to disputes under the new legislation. However, the revision also contains a new provision addressing the responsibility of the buyer.

1. Seller's Entitlement to Notice of Defects

Revised Article 2522 provides:

The buyer must give the seller notice of the existence of a redhibitory defect in the thing sold. That notice must be sufficiently timely as to allow the seller the opportunity to make the required repairs. A buyer who fails to give that notice suffers diminution of the warranty to the extent the seller can show that the defect could have been repaired or that the repairs would have been less burdensome, had he received timely notice. Such notice is not required when the seller has actual knowledge of the existence of a redhibitory defect in the thing sold.

In construing the 1974 amendment, the appellate courts have recognized the seller to be entitled to an opportunity to repair but have developed little doctrine concerning "timely" repair opportunities.²² The revised article, by its express terms, entitles the seller to notice affording a timely opportunity to repair the

In any case in which the seller is held liable because of redhibitory defects in the thing sold, the seller shall have a corresponding and similar right of action against the manufacturer of the thing for any losses sustained by the seller, and further provided that any provision of any franchise or manufacturer-seller contract or agreement attempting to limit, diminish or prevent such recoupment by the seller shall not be given any force or effect.

19. The article as amended by 1974 La. Acts No. 673, § 1, is quoted *supra* note 18.

20. The 1974 amendment was prompted by the supreme court's decision in *Prince v. Paretti Pontiac Co., Inc.*, 281 So. 2d 112 (La. 1973). In that case, the court concluded that the purchaser of a new automobile with significant defects was entitled to rescission even though he had not afforded a repair opportunity to the seller.

21. Revised Article 2531 expressly provides that the seller's obligation to return the price includes the payment of interest measured from the time the price was paid. Article 2531 of the 1870 Code refers only to the restoration of the price. Although the revised article does not use the exact language of its antecedent, there are no further differences affecting substance. The articles are quoted *supra* notes 17 and 18.

22. There are numerous decisions holding that good faith sellers are entitled to "reasonable" opportunities to repair defective items. Most of these cases, however, concern the availability of rescission in situations where the seller asserts that he was not afforded a sufficient opportunity to correct the defects. Representative decisions include: *Arnold v. Wray Ford, Inc.*, 606 So. 2d 549 (La. App. 2d Cir. 1992); *Reid v. Leson Chevrolet Co.*, 542 So. 2d 673 (La. App. 5th Cir. 1989); *Webb v. Polk Chevrolet, Inc.*, 509 So. 2d 139 (La. App. 1st Cir. 1987).

defect. The buyer who fails to provide such notice is subject to a "diminution" of warranty. However, warranty responsibility is diminished only to the extent that the seller can show that the defect could have been repaired or that the repairs would have been less burdensome, had he received earlier notice. Thus, timely notice is not a condition of the availability of rescission or other relief.²³ Instead, the seller is given an opportunity to demonstrate that a timely repair opportunity would have resulted in the elimination or amelioration of the defective condition. Consequently, the seller can only defeat an action for rescission by demonstrating that he could have completely remedied the defects in question or that he could have ameliorated the defects to a point where a reduction of the price, as opposed to rescission, would have been the appropriate remedy.

Logically, sellers should be able to resist actions for the reduction of price when they have not been given timely repair opportunities. Further, the text of revised Article 2522 contains no language suggesting that its provisions are applicable only to demands for rescission and not also to claims for reduction of price. However, discussion in the Introduction to the revision asserts that a tender for repair has not been required in actions in *quantum minoris* under the 1974 amendment²⁴ and that sellers will not be entitled to such repair opportunities when price reductions are sought under the new legislation.²⁵

Indeed, there are decisions holding that a tender for repair is not requisite to an action for a price reduction.²⁶ However, the recognition of a cause of action in the absence of a tender for repair need not otherwise determine the significance of a buyer's failure to afford a repair opportunity to a seller. If a

23. The timely notice requirement of revised Article 2522 should be distinguished from the seller's entitlement to a repair opportunity under revised Article 2531. The failure to afford timely notice of the need for repair results in a diminution of the seller's responsibility only if the seller proves that an earlier opportunity would have enabled him to have made repairs that can no longer be accomplished or to have made repairs at a lower cost. Thus, the notice provision appears to have been written on the assumption that the seller complaining of untimeliness nonetheless received a repair opportunity. If a seller has not been afforded a repair opportunity prior to the buyer's suit, however, the seller very probably can avoid rescission without the necessity of proving that the item could have been totally or substantially repaired. The provision of revised Article 2531 concerning the seller's repair opportunity is not significantly different from the provision of amended Article 2531 of the 1870 Code. A number of appellate cases concerning the latter article have concluded that rescission is unavailable when a reasonable repair opportunity has not been afforded. Such decisions include: *Webb v. Polk Chevrolet, Inc.*, 509 So. 2d 139 (La. App. 1st Cir. 1987); *Newman v. Dixie Sales and Serv.*, 387 So. 2d 1333 (La. App. 1st Cir. 1980); *Jordan v. LeBlanc and Broussard Ford, Inc.*, 332 So. 2d 534 (La. App. 3d Cir. 1976).

24. The statement is made in discussion under the heading "Liability of the Good Faith Seller." *Broussard v. Breaux*, 412 So. 2d 176 (La. App. 3d Cir.), writ denied, 416 So. 2d 115 (1982), is cited in support of the proposition.

25. *Id.*

26. Additional decisions include: *Webb v. Polk Chevrolet, Inc.*, 509 So. 2d 139 (La. App. 1st Cir. 1987); *Robertson v. Coleman Oldsmobile, Inc.*, 451 So. 2d 1323 (La. App. 1st Cir. 1984); *Coffin v. LaBorde*, 393 So. 2d 915 (La. App. 4th Cir.), writ denied, 396 So. 2d 1349 (1981).

seller can resist a demand for rescission by demonstrating an ability to have remedied defects, he should likewise be given an opportunity to show that he could have remedied defects at a cost less than the sum sought by a buyer in an action in *quanti minoris*. It is possible that the Introduction's comment was intended to address only the existence of a cause of action and not also the extent of a seller's responsibility in *quanti minoris*.²⁷ In any event, the legislation itself does not limit its provision to demands for rescission, and once more, there appears no rational basis for recognizing such a limitation.

2. *Manufacturer's Entitlement to Notice of Defects*

The second paragraph of revised Article 2522 will also present an issue for judicial resolution. The provision relieves the buyer of the requirement of giving notice when the seller has *actual knowledge* of the existence of a redhibitory defect in the thing sold.²⁸ Consistent with this provision, a comment to the article states that manufacturers, when they have only presumptive and not also actual knowledge of defects, are entitled to receive notice.²⁹ Additionally, a further comment provides that a manufacturer who "sells his products through a dealer . . . is deemed to receive notice when the dealer is properly notified of the existence of a defect."³⁰ The reason for giving notice to manufacturers, however, is unclear. While revised Article 2531 affords a repair opportunity to the "seller who did not know" of the defect,³¹ revised Article 2545 provides no such opportunity to the seller who did have such knowledge.³² Further, this latter article declares that a "seller is deemed to know that the thing he sells has a redhibitory defect when he is a manufacturer of that thing."³³

If a manufacturer is in all instances treated as a seller with knowledge and is thus denied an opportunity to remedy defects, it is difficult to determine why such a party would be given notice of defects under revised Article 2522. The provision could be construed so that a manufacturer can assert a "diminution" of warranty when a good faith retailer has not been given a timely repair opportunity.³⁴ Additionally, it is arguable that the provision was intended to affirm only a right of manufacturers to establish that damages could have been reduced or

27. The statement is contained in discussion beneath a heading indentifying the topic as "Liability of the Good Faith Seller." No similar statement is made in the discussion under the heading "Notice of the Existence of Defect."

28. The article is quoted *supra* text following note 21.

29. Revised La. Civ. Code art. 2522, cmt. (b).

30. *Id.* cmt. (c).

31. See *supra* text at notes 17-21.

32. See *infra* text at notes 40, 44-46.

33. *Id.*

34. The Third Circuit Court of Appeal may be taking this position. Consider *Almanza v. Ford Motor Co.*, 499 So. 2d 733 (La. App. 3d Cir. 1986) and *Jordan v. LeBlanc and Broussard Ford, Inc.*, 332 So. 2d 534 (La. App. 3d Cir. 1976).

avoided through repairs or cessation of an item's use.³⁵ Finally, it is possible that the provisions concerning notice of defects and repair opportunities simply do not mesh.

At least at one point, the drafters of the legislation apparently sought a consistency between the provisions on notice of defects and repair opportunities. The Introduction to the enactment states:

Under paragraph two of article 2522, notification is not required where the seller knew, *or is presumed to have known*, of the defect involved; that is, where the seller is in bad faith. That provision is consistent with the rule dispensing with tender of the thing for repairs where the seller is a manufacturer.³⁶

The Introduction's assertion is today inaccurate, for the second paragraph of revised Article 2522 as enacted refers only to the seller's actual knowledge. Presumptive knowledge is not mentioned.³⁷ Thus, there is need for an amendment to clarify the purpose of requiring that a manufacturer be given timely notice of redhibitory defects. For the present, it should be remembered that all sellers, even those with actual knowledge of defects, are entitled to demonstrate that complaining parties have not made reasonable efforts to mitigate the damages in question.³⁸

C. Liability of the Seller Who Knew of Defects

The new legislation does not appreciably change the responsibility of the seller who does not disclose the redhibitory vices he knows to exist. Since 1808, Louisiana legislation has made such a seller responsible to the buyer for "damages" in addition to the "restitution of the price" and to the reimbursement of the "costs occasioned by the sale."³⁹ In 1968, the Civil Code article addressing the topic was amended to impose responsibility also for the buyer's "reasonable attorneys' fees."⁴⁰ Revised Article 2545 provides in part:

35. See La. Civ. Code art. 2002, quoted *infra* note 38, concerning the consequences of failure to mitigate damages.

36. (Emphasis supplied). The quotation is taken from the final paragraph of the discussion beneath the heading "Notice of the Existence of Defect."

37. The article is quoted *supra* text following note 21.

38. La. Civ. Code art. 2002:

An obligee must make reasonable efforts to mitigate the damage caused by the obligor's failure to perform. When an obligee fails to make these efforts, the obligor may demand that the damages be accordingly reduced.

39. La. Civ. Code Bk. III, Tit. VI, arts. 71 and 72 (1808).

40. La. Civ. Code art. 2545 (1870) provides:

The seller, who knows the vice of the thing he sells and omits to declare it, besides the restitution of price and repayment of the expenses, including reasonable attorneys' fees, is answerable to the buyer in damages.

A seller who knows that the thing he sells has a defect but omits to declare it . . . is liable to the buyer for the return of the price with interest from the time it was paid, for the reimbursement of the reasonable expenses occasioned by the sale and those incurred for the preservation of the thing, and also for damages and reasonable attorney fees.

The new legislation removes any possible question concerning the existence of the seller's responsibility for the expense incurred by the buyer in the preservation of the defective item. Additionally, the new formulation clarifies the law by affirming that interest on the price accrues from the time the price was paid.⁴¹ The article is also significant in its further provision that "a seller may be allowed credit" if the buyer has made use of the "thing, or the fruits it might have yielded," and the use or fruits afforded "some value to the buyer."⁴² This expression is consistent with the jurisprudence recognizing that a seller with presumptive or even actual knowledge of defects may be entitled to credit resulting from the use of the item or from consumption of the fruits it has produced.⁴³ Similarly, the new legislation, by its express language, recognizes judicial discretion to determine whether a use had a "value" justifying the recognition of a money value as an offset against the seller's responsibilities.⁴⁴

The final sentence of revised Article 2545 is also noteworthy. It reads: "A seller is deemed to know that the thing he sells has a redhibitory defect when he is a manufacturer of that thing." Thus, in keeping with long established jurisprudence,⁴⁵ manufacturers, without regard to their actual knowledge of defects or to their degree of care in manufacturing, are constructively charged with awareness of any defects existing in their products. Accordingly, manufacturers are in no circumstances entitled to the repair opportunity afforded vendors who were unaware of defects.⁴⁶ Similarly, manufacturers of defective

41. Despite the supreme court's guidance in *Alexander v. Burroughs Corp.*, 359 So. 2d 607 (La. 1978), the seller's responsibility for interest has been variously treated in the jurisprudence.

42. Revised Article 2545 provides in part: "If the use made of the thing, or the fruits it might have yielded, were of some value to the buyer, such a seller may be allowed credit for such use or fruits."

43. *Alexander v. Burroughs Corp.*, 359 So. 2d 607 (La. 1978).

44. See *supra* note 42.

45. The decisions consistently hold that manufacturers have presumptive knowledge of defects existing in their products. Among these cases are *Alexander v. Burroughs Corp.*, 359 So. 2d 607 (La. 1978) and *Rey v. Cuccia*, 298 So. 2d 840 (La. 1974).

46. When Article 2531 of the 1870 Code was amended in 1974 to afford good faith sellers a repair opportunity, there was no corresponding amendment to Article 2545, the provision prescribing the responsibility of sellers who knew their goods were defective. Further, the courts have ruled that sellers with actual or presumptive knowledge of defects are not entitled to repair opportunities. See, e.g., *Dickerson v. Begnaud Motors, Inc.*, 446 So. 2d 536 (La. App. 3d Cir. 1984) and *Riche v. Krestview Mobile Homes, Inc.*, 375 So. 2d 133 (La. App. 3d Cir. 1979). The revision makes no mention of repair opportunities for vendors having knowledge of defects, and comment (f) to revised Article 2545 states that "a buyer is not required to give a bad faith seller or a manufacturer an

items, in addition to the responsibilities imposed upon good faith vendors, are liable for damages and attorneys' fees.

D. Prescription

1. Seller Who Knew Not of Defects

The new enactment alters the law governing the prescription of claims for redhibition. Under the 1870 Code, a claim against a seller who had no knowledge of defects prescribes one year after the date of the sale.⁴⁷ The revised legislation provides that such a claim "prescribes in four years from the day delivery of [the] thing was made to the buyer, or one year from the day the defect was discovered by the buyer, whichever occurs first."⁴⁸ Neither the comment to the preceding provision nor the enactment's Introduction offers any explanation for the change. Obviously, the Law Institute concluded that a one year prescriptive period was too short. Many other parties, however, will not share this opinion and unquestionably will disagree with a decision to subject a vendor to the possibility of a suit filed as late as four years after the delivery of an allegedly defective item.

Supporters of the revision might assert that the four year provision is tempered by the additional requirement that suit be brought within one year of the discovery of the defects. The significance of the one year limitation will depend in part upon the judiciary's allocation of the burden of proof as to the date of discovery. Under the 1870 Code, the prescription affecting claims against the bad faith seller runs from the date of the buyer's discovery of the defects,⁴⁹ and the seller is required to prove the date of discovery in order to succeed with a plea of prescription.⁵⁰ Because the revision does not provide guidance concerning the burden of proving discovery, it is very likely that the 1870 Code's rule concerning the bad faith seller will be applied to claims made against such sellers under the new enactment.⁵¹ Further, if the burden of proof is allocated to the seller in these cases, there might be some judicial inclination

opportunity to repair before instituting an action in redhibition."

47. La. Civ. Code art. 2534 (1870) provides in pertinent part: "The redhibitory action must be instituted within a year, at the farthest, commencing from the date of the sale."

48. Revised La. Civ. Code art. 2534.

49. La. Civ. Code art. 2546 (1870):

In this case [where the seller knew of the vice], the action for redhibition may be commenced at anytime, provided a year has not elapsed since the discovery of the vice.

This discovery is not to be presumed; it must be proved by the seller.

50. *Id.*

51. The comment to revised Article 2534 states that the provision "combines the substance of" the two 1870 Code articles which separately regulated sellers who did and sellers who did not know of defects. Nothing is said of any intention to change the rule requiring a bad faith seller to prove the date of the buyer's discovery of the defects.

to require the seller without knowledge to bear the same burden despite his good faith.

Additionally, allocating the burden to the good faith seller would be consistent with the normal jurisprudential rule requiring the party asserting an exception to establish the grounds on which the exception is based.⁵² However, because information concerning the time of discovery can be supplied much more readily by the buyer than by the seller, the buyer, for this reason, could be required to establish that a year had not passed between discovery of defects and filing of suit.

2. *Seller Who Knew of Defects*

The revision maintains the prescriptive period of the 1870 Code in the case of claims against "a seller who knew, or is presumed to have known, of the existence of a defect in the thing sold."⁵³ The buyer's claim against such a seller "prescribes in one year from the day the defect was discovered by the buyer."⁵⁴ As previously noted, the revision does not include a counterpart to the 1870 Code's express requirement that the discovery of the vice "be proved by the seller."⁵⁵ However, for the reasons set forth in the discussion of claims against good faith sellers,⁵⁶ it is likely that the bad faith seller will continue to bear the burden of proving the date of the buyer's discovery of defects.

3. *Sale of Animals*

The revision contains only one article concerning prescription of redhibitory claims, and that article sets forth rules applicable to the sale of "things."⁵⁷ Hence, there is no distinct prescriptive period applicable to sales of animals as there has been under Article 2535 of the 1870 Code.⁵⁸

52. *Langlinais v. Guillotte*, 407 So. 2d 1215 (La. 1981); *Succ. of Thompson*, 191 La. 480, 186 So. 1 (1938); *White v. Davis*, 169 La. 101, 124 So. 186 (1929).

53. Revised La. Civ. Code art. 2534. The counterpart in the 1870 Code is La. Civ. Code art. 2546 (1870), quoted *supra* note 49.

54. Revised Article 2534 provides in pertinent part:

The action for redhibition against a seller who knew, or is presumed to have known, of the existence of a defect in the thing sold prescribes in one year from the day the defect was discovered by the buyer.

55. Revised Article 2534, discussed *supra* text at notes 53 and 54, expresses no requirement that the seller prove the buyer's discovery of the vice. The 1870 Civil Code's provision establishing such a requirement, Article 2546, is quoted *supra* note 49.

56. See discussion *supra* text at notes 49-52.

57. Revised La. Civ. Code art. 2534, discussed *supra* text at notes 47-56.

58. La. Civ. Code art. 2535 (1870) provides: "The redhibition of animals can only be sued for within two months immediately following the sale."

4. Interruption

The revision contains an interesting provision concerning interruption of prescription. The last paragraph of Article 2534 provides:

In either case [whether the seller did or did not know of defects] prescription is interrupted when the seller accepts the thing for repairs and commences anew from the day he tenders it back to the buyer or notifies the buyer of his refusal or inability to make the required repairs.

This provision is consistent with pre-existing jurisprudence.⁵⁹ Further, the article suggests that the prescriptive scheme affecting the seller with knowledge of defects remains applicable after his efforts to repair the item. If this is so, the repair efforts interrupt the prescription that commenced upon the discovery of defects, and prescription does not recommence until any later discovery that the repair efforts were unsuccessful.

E. Other Changes

1. When Defects Must Be Present

Under the revision, a buyer asserting a claim in redhibition must prove that a redhibitory defect was in existence "at the time of delivery."⁶⁰ The 1870 Code, on the other hand, requires proof that the defects were present "before the sale was made."⁶¹ The Law Institute views the change as a corollary of the revision's modification of the law concerning transfer of risk of loss.⁶² Under the 1870 Code, both ownership and risk of loss are transferred, as between the parties, on the date of the sale.⁶³ The revision, while providing that ownership is transferred upon agreement,⁶⁴ defers the shifting of the risk of loss until the item is delivered.⁶⁵ It is debatable whether this change, in itself, warrants the

59. There are numerous decisions holding that prescription is interrupted as a consequence of a seller's repair efforts. Examples include *Castille v. General Motors Corp.*, 417 So. 2d 95 (La. App. 3d Cir. 1982) and *First National Bank of Ruston v. Miller*, 329 So. 2d 919 (La. App. 2d Cir.), *writ denied*, 333 So. 2d 243 (1976).

60. Revised Article 2530 provides:

The warranty against redhibitory defects covers only defects that exist at the time of delivery. The defect shall be presumed to have existed at the time of delivery if it appears within three days from that time.

61. La. Civ. Code art. 2530 (1870) provides:

The buyer who institutes the redhibitory action, must prove that the vice existed before the sale was made to him. If the vice has made its appearance within three days immediately following the sale, it is presumed to have existed before the sale.

62. Revised La. Civ. Code art. 2530, cmt. (a).

63. La. Civ. Code arts. 2456, 2467 (1870).

64. Revised La. Civ. Code art. 2456.

65. Revised La. Civ. Code art. 2467.

change in the rule concerning redhibitory defects. However, the new redhibition provision can be further justified by the occasional difficulties in determining exactly when an agreement transfers ownership and by the usually limited opportunity of a buyer to discover defects prior to delivery.

2. *Destruction by Fortuitous Event*

The 1870 Code provisions concerning the destruction of defective items by fortuitous events are by no means clear. One article states that the buyer of a defective item destroyed by a fortuitous event cannot succeed in a redhibitory action unless suit preceded the item's destruction.⁶⁶ Another article provides that the action may be brought after the loss of the object "if that loss was not occasioned by the fault of the purchaser."⁶⁷ The revision, in Article 2532, removes this seeming contradiction by providing that the loss is borne by the buyer "if the thing is destroyed by a fortuitous event before the buyer gives the seller notice of the existence of a redhibitory defect that would have given rise to a rescission of the sale."⁶⁸ Thus, the article identifies the giving of notice of defects, as opposed to the filing of suit for redhibition, as the event that shifts the risk of loss from the buyer to the seller. Further, the revision establishes that the buyer who has not given such notice bears the risk of loss even though the destruction was not occasioned by his fault.⁶⁹ The article also provides that after notice has been given, "the loss is borne by the seller, except to the extent the buyer has insured that loss."⁷⁰ The provision additionally states that a seller

66. La. Civ. Code art. 2533 (1870).

67. La. Civ. Code art. 2536 (1870).

68. Revised Article 2532 provides:

A buyer who obtains rescission because of a redhibitory defect is bound to return the thing to the seller, for which purpose he must take care of the thing as a prudent administrator, but is not bound to deliver it back until all his claims, or judgments, arising from the defect are satisfied.

If the redhibitory defect has caused the destruction of the thing the loss is borne by the seller, and the buyer may bring his action even after the destruction has occurred.

If the thing is destroyed by a fortuitous event before the buyer gives the seller notice of the existence of a redhibitory defect that would have given rise to a rescission of the sale, the loss is borne by the buyer.

After such notice is given, the loss is borne by the seller, except to the extent the buyer has insured that loss. A seller who returns the price, or a part thereof, is subrogated to the buyer's right against third persons who may be liable for the destruction of the thing.

69. The article does not contain a counterpart to the provision of Article 2536 of the 1870 Code. The latter article permits suit after destruction when "loss was not occasioned by the fault of the purchaser." Further, comment (a) to revised Article 2532 asserts that the provision "eliminates the contradiction" within the 1870 Code concerning the significance of the filing of suit. The comment then observes that the revision article identifies the giving of notice of the existence of defects as the event shifting the risk of loss by fortuitous event.

70. See *supra* note 68.

who returns all or part of the price "is subrogated to the buyer's right against third persons who may be liable for the destruction of the thing."⁷¹

3. Multiple Sellers and Multiple Buyers

Article 2538 of the revision provides that the "warranty against redhibitory vices is owed by each of multiple sellers in proportion to his interest."⁷² A comment to the provision states that the article "changes the law . . . by providing that the warranty obligation of co-sellers is divisible."⁷³ In the jurisprudence, the warranty obligation of co-sellers is indivisible, and these vendors thus incur what is effectively a solidary responsibility for their buyer's damages.⁷⁴ Somewhat surprisingly, the obligation to return the purchase price has been classified differently. This commitment is said to be a divisible joint obligation, and a seller's responsibility is a function of his percentage of ownership of the interest conveyed.⁷⁵ Under the revision, a co-seller's responsibility both for damages and for the return of the purchase price is divisible and is computed "in proportion to his interest."⁷⁶

Revised Article 2538 also clarifies the law concerning rights of parties who purchase as co-owners. The 1870 Code states that heirs of the purchaser must "concur" in the "redhibitory action" and that "no one of them can bring it for his part only."⁷⁷ The revision similarly provides that "[m]ultiple buyers must concur in an action for rescission because of a redhibitory defect."⁷⁸ However, the new legislation permits an action for the reduction of the price to be "brought by one of multiple buyers in proportion to his interest."⁷⁹ The revision further stipulates that an *inter vivos* or *mortis causa* transfer of a defective item to multiple successors places the acquirers in the position of multiple buyers.⁸⁰

71. *Id.*

72. Revised Article 2538 provides:

The warranty against redhibitory vices is owed by each of multiple sellers in proportion to his interest.

Multiple buyers must concur in an action for rescission because of a redhibitory defect.

An action for reduction of the price may be brought by one of multiple buyers in proportion to his interest.

The same rules apply if a thing with a redhibitory defect is transferred, *inter vivos* or *mortis causa*, to multiple successors.

73. Revised La. Civ. Code art. 2538, cmt. (a).

74. See La. Civ. Code art. 1818 and the cases cited *infra* note 75.

75. *Schultz v. Ryan*, 131 La. 78, 59 So. 21 (1912); *Collins v. Slocum*, 317 So. 2d 672 (La. App. 3d Cir. 1975).

76. See paragraph 1 of revised La. Civ. Code art. 2538, quoted *supra* note 72.

77. La. Civ. Code art. 2538 (1870).

78. See *supra* note 72.

79. *Id.*

80. *Id.*

III. WARRANTIES AND CONTRACTUAL COMMITMENTS

A. *Warranty of Reasonable Fitness for Ordinary Use*

The chapter on redhibition includes what may be the most significant article in the revision. Revised Article 2524 provides:

The thing sold must be reasonably fit for its ordinary use.

When the seller has reason to know the particular use the buyer intends for the thing, or the buyer's particular purpose for buying the thing, and that the buyer is relying on the seller's skill or judgment in selecting it, the thing sold must be fit for the buyer's intended use or for his particular purpose.

If the thing is not so fit, the buyer's rights are governed by the general rules of conventional obligations.

Because the third paragraph is applicable to the warranties identified in both the first and second paragraphs, the article makes contract remedies available in instances where an item is not "reasonably fit for its ordinary use." The Law Institute asserts that the provision does not alter the law. A comment to the article reads:

This Article is new. It does not change the law, however. It gives express formulation to the seller's obligation of delivering to the buyer a thing that is reasonably fit for its ordinary use. The Louisiana jurisprudence has recognized the existence of that obligation although, in most instances, it has been confused with the warranty against redhibitory vices.⁸¹

Five decisions are cited in support of the comment's proposition.⁸² Also, the Introduction to the revision identifies seven additional cases alluding to the existence of a warranty of fitness.⁸³

An examination of these twelve opinions, together with further research, indicates that the Law Institute may have done much more than its comment

81. Revised La. Civ. Code art. 2524, cmt. (a).

82. *Media Production Consultants, Inc. v. Mercedes-Benz of N. Am., Inc.*, 262 La. 80, 262 So. 2d 377 (1972); *Radalec, Inc. v. Automatic Firing Corp.*, 228 La. 116, 81 So. 2d 830 (1955); *Falk v. Luke Motor Co., Inc.*, 237 La. 982, 112 So. 2d 683 (1959); *Jackson v. Breard Motor Co., Inc.*, 167 La. 857, 120 So. 478 (1929); *Crawford v. Abbott Automobile Co., Ltd.*, 157 La. 59, 101 So. 871 (1924).

83. *Hob's Refrigeration and Air Conditioning, Inc. v. Poche*, 304 So. 2d 326 (La. 1974); *Rey v. Cuccia*, 298 So. 2d 840 (La. 1974); *Fee v. Sentell*, 52 La. Ann. 1957, 28 So. 279 (1900); *Acadiana Health Club, Inc. v. Hebert*, 469 So. 2d 1186 (La. App. 3d Cir. 1985); *Craig v. Burch*, 228 So. 2d 723 (La. App. 1st Cir. 1969); *Cosey v. Cambre*, 204 So. 2d 97 (La. App. 1st Cir. 1967); *Bartolotta v. Gambino*, 78 So. 2d 208 (La. App. Orl. 1955).

suggests. The Introduction itself concedes that the courts' references to a warranty of fitness normally do not attempt "to distinguish that warranty from the Civil Code warranty against redhibitory defects."⁸⁴ The Introduction further acknowledges, as a general proposition, that "in the mind of the judges the Civil Code Articles on redhibition created a warranty of fitness, seemingly indistinguishable from the warranty against latent defects."⁸⁵ Nonetheless, the Introduction asserts that two supreme court cases, *Rey v. Cuccia* and *Hob's Refrigeration and Air Conditioning, Inc. v. Poche*, have "identified a warranty of fitness as—seemingly—separate, though not unrelated to, the Civil Code warranty against redhibitory defects."⁸⁶

Rey v. Cuccia does contain a statement that "the seller is bound by an implied warranty that the thing sold is free of hidden defects and is reasonably fit for the product's intended use."⁸⁷ However, the court in that case recognized no responsibilities in addition to the responsibilities recognized under concepts of redhibition.⁸⁸ Further, the court expressly concluded that the defects in question were in existence at the time of the sales by the retail vendor and the manufacturer of the item.⁸⁹

In *Hob's Refrigeration and Air Conditioning, Inc. v. Poche*,⁹⁰ the supreme court utilized the exact language of *Rey* in once more referring to an implied warranty of fitness for a product's intended use.⁹¹ The controversy involved the responsibility of a seller of a rebuilt air conditioning compressor. A homeowner, who in 1969 paid \$450.00 for the unit, asserted that the compressor first ceased operation about two weeks after its installation. The seller, on the other hand, contended that the unit functioned properly until its replacement became necessary approximately three months after the sale. The seller further contended that the homeowner was responsible for the value of the replacement unit because the initial sale had been made with only a sixty-day warranty. The homeowner, however, denied the existence of any agreement as to the duration of warranty.

The court first concluded that the homeowner had not agreed to accept a sixty-day warranty in lieu of the otherwise existing "law-created implied warranty of fitness."⁹² Next, after noting that the compressor, even under the seller's view, had operated only slightly more than three months, the court

84. The quoted statement is contained in discussion under the heading "The Warranty of Fitness."

85. *Id.*

86. *Id.*

87. *Rey*, 298 So. 2d at 842.

88. *Id.* at 847. Both the manufacturer and the retailer were classified as sellers with awareness of defects and were cast in judgment solidarily for the purchase price paid to the retailer and for attorneys' fees.

89. *Id.* at 845-46.

90. 304 So. 2d 326 (La. 1974).

91. *Id.* at 327.

92. *Id.* at 327.

approved the district court's conclusion that the unit "did not comply with the implied warranty of fitness" for its intended purpose.⁹³ In the supreme court's view, "[a] compressor purchased for \$450 for a home air-conditioner should reasonably be expected to last longer than three months, even though purchased as a rebuilt unit."⁹⁴ Accordingly, the seller's claim for the value of the replacement item was rejected.

This opinion, more than any of the others identified by the Law Institute, suggests the existence of an implied warranty not encompassed by the warranty against redhibitory defects. However, the warranty recognized in this decision can be characterized as one included in the law of redhibition. The court assumed that a properly constructed compressor would have operated for more than three months. Consequently, the failure of the compressor in question can be attributed to defects in original design, defects in rebuilt parts, or fault in the process of reassembly. Thus, the item can be regarded as having been defective at the time of the sale, and the court's decision can be justified through the law of redhibition. In any event, if the judicially recognized warranty of fitness for intended use means anything apart from the warranty against redhibitory defects, it means that the buyer of an item that does not function for as long as it "should reasonably be expected to last"⁹⁵ has recourse without the necessity of proving that the item was defective when it was sold.

Turning to the revision's warranty provisions, it is once more noted that the Law Institute disclaims any intention of changing the law through the enactment of a warranty of reasonable fitness for ordinary use.⁹⁶ In the case of good faith sellers of defective items, however, a change in the law appears unavoidable. Under the revision's provisions on redhibition, the maximum responsibility of the good faith seller is the return of the purchase price and the reimbursement of the incidental expenses of the sale.⁹⁷ There is no responsibility for damages resulting from redhibitory defects.⁹⁸

In the case of a violation of the revision's warranty of fitness for ordinary use, "the buyer's rights are governed by the general rules of conventional obligations."⁹⁹ Under these principles, the aggrieved buyer may seek damages and may also seek the dissolution of the sale.¹⁰⁰ Accordingly, buyers of defective goods sold by good faith sellers will assert that these sellers have violated the warranty of fitness for ordinary use, and if the defects are redhibitory, the goods by definition will be unfit for ordinary use. Thus, the revision may well afford an alternative more lucrative than an action in

93. *Id.* at 328.

94. *Id.* at 328.

95. *Hob's Refrigeration and Air Conditioning, Inc. v. Poche*, 304 So. 2d 326, 328 (La. 1974).

96. See discussion *supra* text at notes 81-86.

97. See Revised La. Civ. Code art. 2531, quoted *supra* note 17.

98. *Id.*

99. See Revised La. Civ. Code art. 2524, quoted *supra* text following note 80.

100. La. Civ. Code arts. 1994, 1995, 2013.

redhibition in every instance where items are affected by redhibitory defects. However, buyers will not avail themselves of this option in situations where the seller can be shown to have had actual or presumptive knowledge of defects. In these situations, buyers can obtain damages and attorneys' fees through redhibition under both the 1870 Code and the revised legislation.¹⁰¹ In the case of a violation of the revision's warranty of fitness for ordinary use, neither the revision nor the law of conventional obligations subjects the seller to responsibility for attorneys' fees.

Because the Law Institute does not refer to the possibilities just discussed,¹⁰² it may not have intended to recognize violations of the warranty of fitness for ordinary use in situations where remedies exist under the law of redhibition. If this approach were taken, the warranty of fitness for ordinary use would apply in relatively few situations. As previously discussed, the warranty could be recognized in instances where items do not function for as long a time as buyers are justified in believing sellers to have impliedly warranted the items to last.¹⁰³ Even in these situations, however, the items may well have had design or other defects existing at the time of sale, and there would again be an overlap of the warranty of fitness for ordinary use and the remedies in redhibition. Thus, if the courts were to deny actions for violation of the warranty of fitness for ordinary use when complaints stem from redhibitory defects, an anomalous situation would exist. Buyers desiring greater recoveries would assert that items they had purchased were initially without defects. Sellers, on the other hand, would contend that the items were latently defective on the date of sale.

B. Warranty of Fitness for Particular Use or Purpose

In addition to the warranty of reasonable fitness for ordinary use, revised Article 2524 recognizes a warranty when a "seller has reason to know the particular use . . . or the . . . particular purpose" of the buyer "for buying the thing, and that the buyer is relying on the seller's skill or judgment in selecting" the item sold.¹⁰⁴ The article further provides that the buyer's rights are "governed by the general rules of conventional obligations" in situations where the item is not "fit for the buyer's intended use or for his particular purpose."¹⁰⁵ The Law Institute's comment, seemingly applicable to both of the article's warranties, asserts that the article does not change the law.¹⁰⁶

The 1870 Code does not prohibit the recognition of contractual remedies stemming from a seller's tacit assurances as to an item's fitness for a particular

101. See Revised La. Civ. Code art. 2545 and La. Civ. Code art. 2545 (1870).

102. The topic is not mentioned in either the Introduction or the comment to Revised La. Civ. Code art. 2524.

103. See *supra* text at notes 90-95.

104. See Revised La. Civ. Code art. 2524, quoted *supra* text following note 80.

105. *Id.*

106. Revised La. Civ. Code art. 2524, cmt. (a).

use or purpose. However, the possible applicability of Article 2529 requires consideration when the creation of contractual rights is concerned. Article 2529 of the 1870 Code provides:

A declaration made in good faith by the seller, that the thing sold has some quality which it is found not to have, gives rise to a redhibition, if this quality was the principal motive for making the purchase.

The article has received relatively little judicial attention since its first enactment in 1825. By its literal terms, a good faith declaration as to the existence of a "quality" in an item gives rise to "a redhibition" if the quality is lacking and the buyer's belief in the quality's existence was his principal inducement for making the purchase. The remedy in situations encompassed by the article is not one for damages for breach of a contractual commitment but is one in redhibition. Because the seller in question was in good faith when making his declaration, the buyer's remedy is restricted to the return of the purchase price together with the reimbursement of the incidental expenses of the sale.¹⁰⁷ Therefore, to the extent that tacit assurances concerning particular uses or purposes can be construed as declarations as to quality, the recognition of contractual remedies, in lieu of remedies in redhibition, arguably effects a change in law.

Article 2529 of the 1870 Code, however, by no means precludes the recognition of a contractual commitment when a seller expressly warrants fitness for a particular use or purpose. The issue is simply whether any assurance short of an express warranty can result in a contractual commitment. Despite the uncertainty of the issue under the 1870 Code, the repeal of its Article 2529 and the enactment of revised Article 2524 make clear that contractual remedies can be recognized in the absence of express warranties when a seller should be aware that a buyer is relying on the seller's skill and judgment to select an item needed for the buyer's particular use or purpose. Further, because the revised article has been patterned after the Uniform Commercial Code's implied warranty of fitness for a particular purpose,¹⁰⁸ appellate decisions of other states will probably be persuasive in determining whether sellers had reason to know of buyers' reliance.

The revision's warranty of fitness for a particular use or purpose presents another issue requiring judicial resolution. It will be necessary to define the seller's responsibility in situations where an item is unfit for the buyer's particular use or purpose only because of its redhibitory defects. But for the law

107. The conclusion that the good faith declarant has the same responsibility as the vendor who lacked knowledge of defects is confirmed by the provision of La. Civ. Code art. 2547 (1870). The article addresses the responsibility of the vendor who made knowingly false declarations as to qualities and provides for a liability including damages and attorneys' fees.

108. U.C.C. § 2-315 provides:

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose.

limiting the responsibility of the seller who is unaware of redhibitory defects,¹⁰⁹ the seller who warrants a defective item to be fit for a particular purpose would unquestionably incur a responsibility in contract under revised Article 2524. However, because the seller would only be responsible for the purchase price and incidental expenses if the same defective item had been sold for its usual purpose,¹¹⁰ it is uncertain whether the seller should owe a greater responsibility where he correctly identifies a purpose for which the item would have been suitable but for its latent defects. If the seller actually had given an express warranty concerning an item's fitness for a particular purpose, the recognition of a contractual responsibility would be appropriate despite the fact that the violation of warranty resulted solely from redhibitory defects. In the case of an implied warranty of fitness, however, it is questionable whether a contractual responsibility should be recognized where there would have been no such responsibility if the item had been sold for its ordinary as opposed to a particular use.

C. Revised Article 2529

The revision repeals the previously discussed Article 2529 of the 1870 Code.¹¹¹ Its replacement, revised Article 2529, provides:

When the thing the seller has delivered, though in itself free from redhibitory defects, is not of the kind or quality specified in the contract or represented by the seller, the rights of the buyer are governed by other rules of sale and conventional obligations.¹¹²

As a consequence of this provision, a seller's "declaration" as to the "quality" of an item as well as any other representation as to "kind or quality," can result in a contractual responsibility if the declaration or representation is inaccurate. Consistently, a contract to supply specified items will be violated if the items supplied are "not of the kind or quality specified in the contract." The Law Institute's comment asserts that the article's enactment will not change the law and that the provision's purpose is "to enhance the distinction between redhibition and breach of contract."¹¹³ As previously discussed, however, the law seemingly will be changed in that declarations and other representations providing basis only for rescission under Article 2529 of the 1870 Code can result in contractual responsibilities under the revision.¹¹⁴

109. See Revised La. Civ. Code art. 2531, quoted *supra* note 17.

110. *Id.*

111. See *supra* text at notes 106-108.

112. Revised La. Civ. Code art. 2529.

113. Revised La. Civ. Code art. 2529, cmt. (a).

114. See *supra* text at notes 104-108.

Further, the law may also be changed as to prescription. In several cases, claims for the breach of a seller's express warranty have been held to be subject to the one year prescriptive period of the law of redhibition.¹¹⁵ The revision, on the other hand, classifies actions for the breach of both express and implied warranties as actions in contract.¹¹⁶ Accordingly, these actions are subject to the ten year prescriptive period of Article 3499 of the Louisiana Civil Code.

D. Revision Articles Applicable Only to Movables

1. Article 2603

In addition to the legislation regulating sales in general, the revision contains a chapter applicable only to sales of movable property.¹¹⁷ Although certain articles in this chapter address rights and remedies of buyers, no comprehensive scheme was enacted to supplant the general law concerning aggrieved purchasers. Nonetheless, several articles in the chapter could arguably affect rights and remedies outlined in other sections of the enactment. Accordingly, pertinent provisions of the chapter on movables will be given brief attention.

Revised Article 2603 warrants consideration. It provides:

The seller must deliver to the buyer things that conform to the contract.

Things do not conform to the contract when they are different from those selected by the buyer or are of a kind, quality, or quantity different from the one agreed.

The second paragraph classifies goods having a "quality . . . different from the one agreed" as nonconforming. It could be argued that goods with redhibitory defects are nonconforming and that a seller's delivery of such goods constitutes a breach of the contractual obligation to deliver "things that conform to the contract." As further support for this proposition, it could be observed that items with redhibitory defects would be unmerchantable and thus would be nonconforming under the Uniform Commercial Code.¹¹⁸ It is highly unlikely, however, that the Law Institute intended the article to affect the law of redhibition. First, a Law Institute comment to the article denies any intention of changing the law.¹¹⁹ Second, a case discussed in the same comment involves a dispute as to whether a product had redhibitory defects or failed to conform to

115. See *Walton v. Katz & Besthoff, Inc.*, 77 So. 2d 563 (La. App. Orl. 1955) and the decisions there cited.

116. Revised La. Civ. Code arts. 2524 and 2529 both provide that actions based upon their provisions are governed by the rules of conventional obligations.

117. Chapter 13, consisting of Articles 2601-2617.

118. To be merchantable under U.C.C. § 2-314, goods "must be at least" such as "are fit for the ordinary purposes for which such goods are used."

119. Revised La. Civ. Code art. 2603, cmt. (a).

contract specifications.¹²⁰ Accordingly, any modification of the seller's responsibility for redhibitory defects is not apt to be based upon the seller's obligation to deliver items conforming to contract specifications. Such a change would more probably be grounded in the revision's warranty of reasonable fitness for ordinary use.¹²¹

2. *Acceptance and Redhibition*

The chapter on movables identifies a right of a buyer to "reject nonconforming things" and provides that "a buyer's failure to make an effective rejection within a reasonable time shall be regarded as an acceptance of the things."¹²² The only provision in any way addressing the significance of an acceptance is revised Article 2606. It provides:

A buyer who, with knowledge, accepts nonconforming things may no longer reject those things on grounds of that nonconformity, unless the acceptance was made in the reasonable belief that the nonconformity would be cured.¹²³

Under the Uniform Commercial Code, a buyer who has accepted goods cannot rescind the sale unless he thereafter makes a timely discovery of a significant nonconformity providing basis for a "revocation of acceptance."¹²⁴ Because the new Louisiana legislation makes no reference to a concept of revocation of acceptance, it might be argued that a buyer who has accepted goods with redhibitory defects cannot obtain rescission on the basis of their subsequent discovery and is thus limited to an action for the reduction of the purchase price. This contention, however, is not apt to find favor. The chapter on movables does not purport to provide a comprehensive expression of buyers' remedies, and the language of revised Article 2606 itself suggests that accepted nonconforming items can be "rejected" on the basis of previously unknown grounds of nonconformity. Similarly, a comment to the provision asserts that such goods can be subsequently "rejected."¹²⁵ Accordingly, the availability of rescission, whether based upon redhibition or upon other grounds, should not be foreclosed by a technical acceptance made without awareness of a subsequently discovered complaint.

120. *Victory Oil Co., Inc. v. Perret*, 183 So. 2d 360 (La. App. 4th Cir. 1966).

121. *See supra* text at notes 80-104.

122. Revised La. Civ. Code art. 2605.

123. Revised La. Civ. Code art. 2606.

124. U.C.C. §§ 2-607, 2-608.

125. Revised La. Civ. Code art. 2606, comment (b) provides:

Under this Article, though a buyer who, with knowledge of a particular nonconformity, has accepted non-conforming things may no longer reject them on grounds of that nonconformity, he may still reject them on other grounds, such as unsuitableness of the nonconforming things for their apparent purpose.

IV. CONCLUSION

The redhibition chapter of the 1993 revision of the law of sales affects a number of provisions in the pre-existing law. For instance, in an action in redhibition under the 1870 Code, the buyer must show that the item was defective when it was sold, even if it was not then delivered.¹²⁶ In cases regulated by the new legislation, the pertinent time is the moment that delivery was made.¹²⁷ Also, the prescriptive period regulating claims against good faith sellers has been altered. Under the 1870 Code, the applicable period is one year measured from the date of sale.¹²⁸ The revision recognizes the shorter of a four year period measured from the date of delivery and a one year period measured from the buyer's discovery of the existence of the redhibitory defects.¹²⁹

Additionally, the revision affirms that a good faith seller of defective items is entitled to a "timely" notice of the need for repair and that a buyer's failure to provide such notice can diminish the seller's responsibility in redhibition.¹³⁰ However, the legislation does not clearly establish the significance of a buyer's failure to give timely notice insofar as actions in *quantum minoris* are concerned. Further, the legislation includes manufacturers who lacked actual knowledge of defects among the sellers who are entitled to timely notice, even though manufacturers are not themselves entitled to repair opportunities.¹³¹ Thus, uncertainty exists as to the consequences of failure to give notice to a manufacturer. The legislature should remove this uncertainty and should clarify also the role of the notice provision in actions in *quantum minoris*.

The articles concerning express and implied warranties are probably the most significant provisions of the revision. The legislation repeals the 1870 Code's Article 2529, under which a "declaration" as to "quality . . . gives rise to a redhibition" if the declared quality is absent.¹³² Pursuant to revised Article 2529, representations as to "kind or quality" result not in a basis for redhibition but in warranties having the effect of contractual commitments.¹³³ In addition to this change concerning the consequence of express representations, the revision recognizes implied warranties including a warranty that a "thing sold must be reasonably fit for its ordinary use."¹³⁴ Because things having redhibitory defects are "useless" or have significantly diminished "usefulness" or

126. See La. Civ. Code art. 2530 (1870), discussed *supra* text at notes 60-65.

127. See Revised La. Civ. Code art. 2530, discussed *supra* text at notes 60-65.

128. See La. Civ. Code art. 2534 (1870), discussed *supra* text at note 47.

129. See Revised La. Civ. Code art. 2534, discussed *supra* text at note 48.

130. See Revised La. Civ. Code art. 2522, discussed *supra* text at notes 21-38.

131. See *supra* note 46 and accompanying text.

132. See *supra* text at notes 106-108, 111.

133. See *supra* text at notes 111-114.

134. See Revised La. Civ. Code art. 2524, discussed *supra* text at notes 80-104.

"value,"¹³⁵ the legislation contains a definitional overlap in that the presence of redhibitory defects logically results in the absence of reasonable fitness for ordinary use. The existence of this overlap presents significant difficulties concerning remedies.

The breach of the warranty of reasonable fitness for ordinary use constitutes a breach of contract and thus makes available contract remedies including an action for damages.¹³⁶ Under the redhibition provisions of the revision, however, the seller who was unaware of redhibitory defects is responsible only for the return of the purchase price together with the incidental expenses of the sale.¹³⁷ It may be that the Law Institute did not intend redhibitory defects alone to give rise to a breach of the warranty of reasonable fitness for ordinary use.¹³⁸ The issue calls for legislative clarification, and even if it is concluded that redhibitory defects do not result in a breach of the warranty of reasonable fitness for ordinary use, there will remain difficulties in determining whether design or other deficiencies constitute redhibitory vices.

The revision also recognizes a warranty of fitness for a buyer's particular use or purpose.¹³⁹ Breach of this warranty, like breach of the warranty of reasonable fitness for ordinary use, results in the availability of contract remedies.¹⁴⁰ The provision is patterned after the Uniform Commercial Code's implied warranty of fitness for a particular purpose,¹⁴¹ and jurisprudential developments in other states will undoubtedly influence Louisiana's construction of the warranty. As in the case of the warranty of reasonable fitness for ordinary use, difficulty will be encountered in reconciling the new warranty with the traditional warranty against redhibitory defects. It will be necessary to determine the seller's responsibility when an item he has furnished would have been suited for the buyer's particular purpose but for the existence of redhibitory defects. When it is remembered that the seller in question gives no express warranty and that he would not have been responsible for damages if he had sold the same item for its ordinary purposes, it is by no means clear that he should bear a full contractual responsibility.¹⁴²

While this article emphasizes areas needing further legislative attention, it is not intended to detract from the merits of the revision. The redhibition chapter clarifies a number of issues and provides thoughtful solutions for several situations not adequately addressed in pre-existing legislation. Despite the need for further consideration, the redhibition chapter is a definite accomplishment.

135. See Revised La. Civ. Code art. 2520, quoted *supra* text following note 11.

136. See *supra* text at notes 96-100.

137. See Revised La. Civ. Code art. 2531, quoted *supra* note 17.

138. See *supra* text at notes 81, 102-103.

139. See Revised La. Civ. Code art. 2524, discussed *supra* text at notes 104-111.

140. *Id.*

141. See *supra* note 108 and accompanying text.

142. See *supra* text at notes 108-111.

